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# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 563

36

CITY OF DETROIT, a Michigan  
Municipal Corporation, and  
COUNTY OF WAYNE, a Michigan  
Constitutional Body Corporate,  
Petitioners,

v.

THE MURRAY CORPORATION OF AMERICA  
a Delaware Corporation, and  
THE UNITED STATES OF AMERICA, Intervenor,  
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

## Brief for Respondent in Opposition

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*ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT*

**BRIEF FOR RESPONDENT IN OPPOSITION**

## **OPINIONS BELOW**

The opinion of the District Court is reported at 132 F. Supp. 899. The opinion of the Circuit Court of Appeals for the Sixth Circuit, (Appendix B to Petition for Certiorari) is reported at 234 F. (2d) 380.

## **JURISDICTION**

The jurisdictional requisites are adequately set forth in the Petition for Certiorari.

## QUESTIONS PRESENTED

The questions presented by the instant case can be succinctly stated as follows:

1. Did the United States contracting procurement officers have authority under Federal law to provide for and approve the inclusion of partial payment-title vesting clauses,<sup>1</sup> in subcontracts for the production of defense material, providing that upon receipt of a partial payment upon the purchase price title to all materials, inventories and work in process produced or acquired for the United States should vest in the United States?
2. Was the title which vested in the United States, pursuant to the partial payment-title vesting clauses in defense material procurement contracts, absolute title or merely security title or a lien?
3. Is property owned by the United States subject to state and local **ad valorem** personal property taxation merely because the property is in possession of a private contractor and the tax is assessed to the contractor and not directly to the United States?

## STATUTES AND REGULATIONS INVOLVED

Pertinent sections of the Armed Services Procurement Act of 1947 (C. 65, 62 Stat. 21, et seq., 41 U.S.C.A. 151, et seq.) under which the defense contracts here involved were negotiated and entered into are set forth in Appendix A attached hereto. The Armed Services Procurement Regulations dealing with partial payments and the fundamental distinction between partial and advance payments are set forth in Appendix B hereto.

Excerpts from the City of Detroit Charter, providing for a tax upon personal property, which are relevant to the issues here involved appear in Appendix C hereto.

<sup>1</sup> The text of said partial payment title vesting clauses appears herein at page 3 and in Appendix B (page 3b) attached hereto.

## STATEMENT OF THE CASE

This is a consolidated action originally brought by plaintiff respondent, The Murray Corporation of America (hereinafter referred to as "Murray"), for a refund of personal property *ad valorem* taxes assessed by defendants-petitioners, City of Detroit and County of Wayne as of January 1, 1952 upon personal property of the United States then in the possession of Murray under two letter subcontracts, under letter prime contracts between Kaiser Manufacturing Company and the United States and Curtiss-Wright Corporation and the United States, respectively, for the manufacture of parts and components for aircraft and aircraft engines for the United States Air Force for defense purposes.

Title to such personal property was vested in the United States on and prior to the assessment date by virtue of provisions of partial payment-title vesting clauses, incorporated in the letter subcontracts, which provided expressly that upon receipt by Murray of

"partial payments . . . prior to delivery, on work in progress for the Government under this contract . . .

(b) Upon the making of any partial payment under this contract, **title** to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, **shall forthwith vest in** the Government; and **title** to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid **shall vest in the Government forthwith** upon said acquisition or production . . ."<sup>2</sup>

"This is a standard and widely used partial payment clause contained in procurement contracts for defense work for the United States Government, which clause is permitted by Federal law and is provided for under applicable procurement regulations.



Partial payments were made to Murray under each of the aforementioned letter subcontracts prior to January 1, 1952, the assessment date, and thereupon title vested in the United States and remained vested in the United States on and after such date. Throughout, Murray contended that the property was owned by the United States and was immune from local ad valorem taxation and that the assessment and taxation of such property to Murray was illegal and void. After exhausting all administrative review Murray paid the taxes in question involuntarily and under written protest.

The cause was submitted to the District Court upon plaintiff respondent's Motion for Summary Judgment and at the hearing of March 11, 1954—

**"It was agreed among the parties that there was no genuine issue of any material fact, and that a summary judgment in favor of the plaintiff, or in favor of the defendants would be in order."**

See opinion of District Court, 132 Fed. Supp. 899, 900.

The tax here in question is an ad valorem property tax assessed pursuant to the Michigan General Property Tax Law and the Charter of the City of Detroit.

The City of Detroit personal property taxes here involved were assessed pursuant to Title VI, Chapter II, Section 1 of the Charter of the City of Detroit which provides:

**"Section 1 All real and personal property within the city subject to taxation by the laws of this state shall be assessed at its true cash value by the board of assessors herein provided. . . . All taxes upon personal property may be assessed in any district, whether the person assessed is a resident of such district or not."**

Both the City of Detroit and County of Wayne personal property tax assessments are made subject to the authority of the General Property Tax Act of Michigan, Act 206 of the

Public Acts of Mich. 1893, as amended (6 Mich. Stat. Anno. Sec. 7.1-7.243).

The tax is levied and assessed upon **property**, though collection may be enforced against the owner or, under certain circumstances, the person in possession. The tax is not a specific or privilege tax assessed against the taxpayer. *City of Detroit v. Phillip*, 313 Mich. 211; *Pingree v. Auditor General*, 120 Mich. 95, 102, 109.

If the title to and ownership of the property assessed was vested in the United States, the assessment is clearly void because such property owned by the United States is immune from taxation, even though in the possession of Murray. *United States v. Allegheny County*, 322 U.S. 174 (1944); *Van Brocklin v. Tennessee*, 117 U.S. 151 (1886); see *Kern-Limerick, Inc.*, and *United States v. Arkansas*, 347 U.S. 110, 123, and footnote 14; compare *Esso Standard Oil Co. v. Evans*, 345 U.S. 495 at 499 (1953). This is also recognized by Michigan authorities. *Taylor v. County of Genesee*, 286 Mich. 674, 677-78 (1938); *Opinions of Michigan Attorney General*, January 17, 1936 and May 28, 1941.

On the other hand, if the partial payments clause was invalid under Federal law or if the title under the partial payments clause was only a bare lien or security title—as petitioners contend—and ownership in fact remained in Murray on the tax assessment date, then under both Michigan and Federal law the property was not immune from taxation and the assessment was valid. That is the basic issue presented by this case.

The District Court and the Court of Appeals concluded as a matter of law that the partial payments clauses were authorized and valid under Federal law and that absolute title and ownership to the property in question was vested in the United States on tax assessment day.

## ARGUMENT

The issues presented by this case were thoroughly considered and correctly decided by the Court of Appeals in accordance with the decisions of this Court and do not warrant review on certiorari.

At the outset it should be observed that the contention of petitioners (pages 3 and 4 of Petition for Certiorari) that the validity of state and local taxing statutes is here involved is wholly without merit or foundation.

Neither the Court of Appeals nor the District Court decided that the Michigan General Property Tax Law or the Charter of the City of Detroit, pursuant to which the taxes in question were assessed, were invalid as repugnant to the Constitution, treaties or laws of the United States. The courts below held that under the partial payments clause in question the United States was vested with absolute title to the property in question and accordingly Murray had no interest in the property which could be subject to taxation. The validity of the ad valorem tax laws of the State of Michigan and of the City of Detroit have never been questioned in this litigation. The only real question has been whether title was vested in the United States or in Murray.

Petitioners have never contended that property of the United States may be subjected to state ad valorem property taxes and the Michigan statute has never been construed as permitting the taxation of Federally owned property. Indeed, in his argument before the District Court counsel for the City of Detroit stated:

"And I might say that it is not the position of the City that it has the right to tax the property of the United States Government. But we contend that we did not do that in this case."<sup>3</sup>

<sup>3</sup>Transcript of proceedings before Honorable Thomas P. Thornton, District Judge, March 11, 1954; page 76.

In their joint Reply Brief in the Court of Appeals petitioners further stated that—

~~“Neither the County nor the City has contended that these levies were specific taxes or that they were not ad valorem property taxes.”~~

The District Court noted that—

“There is no disagreement on the proposition that local government may not tax property owned by the Federal Government. Whether the personal property here assessed was owned by the Federal Government in the sense that it could not be taxed at a local level is the issue.” 132 F. Supp. 899,904.

Petitioners’ statement (pages 3 and 4 of Petition for Certiorari) that by determining that title to the personal property in question was vested in the Government the Court of Appeals caused “invalidation of state and local taxing statutes . . . as repugnant to the implied constitutional immunity of the United States,” is a non sequitur. Admittedly the state and local taxing statutes imposing an ad valorem tax on property are valid. If title to the property was vested in the United State on tax assessment day, the property was constitutionally immune from such taxation. If title was not vested in the United States, there was no immunity.

The Court of Appeals merely applied Federal law to determine whether title to property produced for the sole ownership and use of the United States, in connection with the national defense, was in fact vested in the United States. *United States v. Allegheny County* 322 U.S. 174, 182; (1944) *Kern-Limerick Inc. v. Scurlock*, 347 U.S. 110, 121 (1954). Having so determined, the doctrine of Federal constitutional immunity undisputably obtains.

## I.

**THERE IS NO CONFLICT OF DECISION**

The Petition for Certiorari makes no assertion of conflict of decision. The decision below is in complete accord with the holdings of this Court, and other Federal and state courts, concerning the validity and efficacy of partial payment clauses in Government procurement contracts and the constitutional immunity of Government-owned property from state and local ad valorem taxes.

## II.

**THE DECISION OF THE COURT OF APPEALS IS  
CLEARLY CORRECT**

The opinion of the Court of Appeals discloses the searching examination made by that Court of the controlling decisions of this Court and the correct application of the law of those decisions to the instant case. No amount of strained semantics or expressed dissatisfaction with prior decisions of this Court can convert the issues here involved so as to warrant review by certiorari.

**The Partial Payment Clauses Vesting Title in the  
Federal Government Included in the Murray Subcon-  
tracts were Authorized, Effective and Valid.**

Petitioners' contention that the Air Force procurement officers lacked authority to provide for the inclusion of partial payment clauses in the subcontracts here involved, transferring title to aircraft parts and components—manufactured by Murray for the United States—to the United States upon Murray's receipt of a partial payment upon the purchase price is contrary to express statutory provision and the decisions of the Court.

The subcontracts here involved and the prime contracts under which they were entered into were negotiated pursuant to authority contained in the Armed Services Procurement Act of 1947, 62 Stat. 23(a), (41 U.S.C. Section 151(c)) and regulations promulgated pursuant thereto. Congress expressly provided in Section 4(a) of this act that—

"Except as provided in subsection (b)<sup>1</sup> of this section, contracts negotiated pursuant to Section 151(c) of this title may be of **any type** which in the opinion of the agency head will promote the best interests of the Government . . ."

Following the enactment of the Armed Forces Procurement Act of 1947, the Secretaries of the respective departments of defense (Army, Navy & Air Force) promulgated and issued joint regulations commonly referred to as the "Armed Services Procurement Regulations", which regulations contained and authorized the specific partial payments clauses incorporated in the subcontracts here in question.

This very section of the Armed Service Procurement Act of 1947—Section 4a—was recently considered by this Court in *Kern-Limerick, Inc. and United States v. Scurlock, Commr. Rev. of Arkansas*, 347 U.S. 110, 116 (1954) wherein it was held that Congress has granted wide discretion to the defense procurement agencies in determining the type of contract which would promote the best interests of the Government.

It has long been recognized that as an incident of the general right of sovereignty, the United States may, within its Constitutional powers, through its various departments, enter

<sup>1</sup>Subsection (b) excludes cost plus a percentage of costs type contracts which are not here involved.

<sup>2</sup>Armed Services Procurement Regulations (A.S.P.R.) 5-107.2(c), (1947 Supplement Code of Federal Regulations Title 10, Chapter VII, Paragraph 805.107-2, Effective November 1, 1947. Printed in 42 F. R. 76931, Appendix B hereto.

into contracts which are not prohibited by law and are appropriate to the exercise of such powers (*Kern-Limerick and United States v. Scurlock*, Commr. Rev. of Arkansas, 347 U.S. 110, 116 (1954); *Muschany v. United States*, 324 U.S. 49, 63 (1945); *Van Brocklin v. Tennessee*, 117 U.S. 151, 154 (1886); *United States v. Linn*, 15 Pet. 290, 315-316 (1841); *United States v. Tingey*, 5 Pet. 115, 127 (1831); *United States v. Hodson*, 10 Wall. 395 (1870); *Neilson v. Lagow*, 12 How. 98 (1851)) and like a private individual may enjoy unrestricted power to determine the terms and conditions upon which it will make needed purchases. *Heim v. McCall*, 239 U.S. 175 (1915); *Ellis v. United States*, 206 U.S. 216 (1907); *Atkin v. Kansas*, 191 U.S. 207 (1903).

Thus in the absence of prohibition procurement officers clearly have authority to include partial payment-title vesting clauses in defense contracts. The inclusion of such provision is manifestly within and appropriate to the just exercise of powers granted to procurement officers by the Armed Services Procurement Act of 1947.<sup>6</sup>

The fundamental error in petitioners' contention lies in their failure to recognize the clear distinction between "advance payments" and "partial payments" despite the fact that the Armed Services Procurement Regulations specifically

<sup>6</sup>It is manifest that such provisions contained in 80% of Air Force procurement contracts were included to assure the Federal government of complete and absolute control and ownership of essential, basic and critical war material at all times—even during the process of manufacture and it was so stipulated by the parties (Stipulation No. 2, paragraph (1), Joint Appendix (85-86)). The clause was not for the mere purpose of avoiding state ad valorem taxes, as now intimated by petitioners (Petition for Certiorari, page 5). However, even if this were the purpose of such clause, the power of Federal procurement officers to include such provision in the contract would not thereby be limited or barred. *Kern Limerick v. Scurlock* 347 U. S. 110, 116-7.



distinguish between such payments.<sup>7</sup> Partial payments upon the purchase price do not fall within statutory prohibitions relative to advance payments which are in the nature of a loan. The practice of using partial payment clauses in procurement contracts has been followed since the early 1800's to the present day. The validity of such partial payment clauses with title vesting in the Government has been recognized and affirmatively approved by the courts, the Attorney General, the Comptroller General and the Armed Services. *United States v. Ansonia Brass & Copper Co.*, 218 U.S. 452, 466-72 (1910); *In re Read York*, 152 F. (2d) 313, 316 (1945); 20 *Opinions of Atty. Gen. (U.S.)* 746, 747 (1894); 29 *Opinions of Atty. Gen.* 46, 48; *Comptroller Gen. Decision No. B-83260*, 4 *Contract Cases Fed. (C.C.H.)* Sec. 60,655 (1949); *Opinion of Judge Advocate Gen., SPJGC*, (1945) 101118, 4 *Contract Cases Fed. (C.C.H.)* Sec. 60,016.

**Absolute Title to the Property in Question was Vested in the United States.**

It has long been recognized that where Federal procurement contracts so provide, title to material on hand and goods in process, in the possession of a contractor, vests in the United States upon receipt by the contractor of a partial payment upon the purchase price. Such title in the United States is absolute and complete—not bare legal title for security purposes—and the property thus acquired is immune from state and local ad valorem taxes. *United States v. Ansonia Brass & Copper Co.*, 218 U.S. 452, 466-72 (1910); *In re Read York*, 152 F. (2d) 313, 316 (1945); *Douglas Aircraft Co. v. Byran County*, 57 Cal. App. (2d) 311 (1943); *Craig, State Tax Collector v. Ingalls Ship Building Corp.*, 192 Miss. 254 (1942); *Superior Shipbuilding Co. v. Beckley*, 175 Wis. 337 (1921); *Wright Aeronautical Corp. v. Glander*, 151 Ohio 29 (1949).

<sup>7</sup>See Appendix B hereto, page 9b.



Petitioners' contention that Murray followed a course of conduct, in dealing with the assessed property, inconsistent with the claim that absolute title vested in the United States is without foundation. Virtually every argument advanced by petitioners in an attempt to support such contention was rejected by this Court in *United States v. Allegheny County*, 322 U.S. 174 (1944) and *United States v. Ansonia Brass and Copper Co.*, 218 U.S. 452 (1910).

The District Court and the Court of Appeals thoroughly considered all of the undisputed facts and the inferences to be drawn therefrom and rejected petitioners' contention as being contrary to law and the express provisions of the subcontracts in question. Accordingly, petitioners' contention (Petition for Certiorari, pages 5-6, and 13) that Murray engaged in a course of conduct inconsistent with the vesting of absolute title in the United States does not present a substantial question for review by this Court. *Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256 (1948).

**Property Owned by the United States is not Subject to State and Local Ad Valorem Property Taxes by Virtue of the Fact that it is in Possession of a Private Contractor.**

Petitioners' argument that the "incidence" of the tax is upon Murray because they assessed the property and sent the tax bill to Murray is without validity. The "incidence" of the ad valorem personal property tax here involved is upon the property and not upon the person to whom the tax bill is sent. (See Court of Appeals opinion, 234 F. (2d) 380 at 383; and *City of Detroit v. Gray*, 314 Mich. 516, 521, and *Pingree v. Auditor General*, 120 Mich. 95, 162, 169). This Court, in unequivocal language, held in *United States v. Allegheny County*, 322 U.S. 174, 187-188 (1944) that Government-owned property is immune from state and local ad valorem taxes either as:

against the Government or the person in possession of such property.<sup>8</sup> This principle was further reaffirmed in *Esso Standard Oil Co. v. Evans*, 345 U.S. 495, 499 (1953), and recognized in *Kern-Limerick Inc. v. Scurlock, Commr. Rev. of Arkansas* 347 U.S. 110, 123. Petitioners' mere dissatisfaction with and refusal to accept the decision of this Court in *Allegheny* is not sufficient to warrant review by certiorari.

A reading of the opinion of the Court of Appeals will clearly negative the assertion that important issues were left unanswered by that Court.

The mere fact that the application of the doctrine of Federal Constitutional immunity of Federally owned property is national in its scope and importance because of the long and extensive use of partial payment title vesting clauses in defense procurement contracts of the United States does not of itself furnish the basis for further review of principles long established by this Court and repeatedly and most recently reaffirmed.

Furthermore, the argument of petitioners that the doctrine creates hardships and inequities hardly affords a basis for such review. "The equities in this important conflict between the United States and one of its most important industrial communities are not capable of judicial ascertainment or equalization" and as this Court suggested in *Allegheny* at pages 190-191, if any remedy is warranted, the "remedy lies in

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<sup>8</sup>It is worthy of note that the Petition for Certiorari (page 7 thereof) carefully points out that this case does not involve a privilege or specific tax but an ad valorem property tax. Having made this pointed distinction petitioners then seek to ignore it and ask the Court to treat this case as if the tax here involved were a privilege or specific tax and overrule its decisions holding that property of the United States is constitutionally immune from state and local ad valorem property taxation.

petition to the Federal Congress, which also is their Congress." See *Keen-Limerick v. Scurlock*, 347 U.S. 110, at 116-7.

### CONCLUSION

The decision below is clearly correct, the questions involved do not call for further review by this Court and no substantial question is presented. It is therefore respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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December 5, 1956

## APPENDIX "A"

### Chapter 3—Procurement of Supplies and Services by Armed Services—C65, 62 Stat. 21, et seq., 41 U. S. C. A. 151 et seq.

#### Section 151. Purchases and contracts for supplies and services —(a) Applicability to all Armed Services.

The provisions of this chapter shall be applicable to all purchases and contracts for supplies or services made by the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Coast Guard, and the National Advisory Committee for Aeronautics (each being hereinafter called the agency), for the use of any such agency or otherwise, and to be paid for from appropriated funds.

#### Advertising requirements; exception of certain pur- chases and contracts from requirements.

(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section 152 of this title except that such purchases and contracts may be negotiated by the agency head without advertising if —

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(10) for supplies or services for which it is impracticable to secure competition;

## Appendix "A"

## Section 1531.

Except as provided in subsection (b) of this section, contracts awarded pursuant to section 151 of this title may be of any type which in the opinion of the agency head will promote the best interests of the Government. Every contract awarded pursuant to section 151 of this title shall contain a suitable clause, as determined by the agency head, to the effect that no person or selling agency has been employed or permitted to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies authorized for the agency or for the purpose of securing business. Any violation of which warrant the Government to have the right to annul such contract without liability on its part, and to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

All contracts negotiated without advertising pursuant to authority contained in this chapter shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall until the expiration of three years after final payment have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts. Pub. Law 413, ch. 4, sec. 4, 72 Stat. 237; 42 Stat. 31, 1951, c. 652, § 5 Stat. 760.

## APPENDIX "B"

Armed Services Procurement Regulations (A.S.P.R.)  
 5-407.2(1), (1947 Supplement Code of Federal Regu-  
 lations Title 10, Chapter VIII, Paragraph 805,407-2,  
 Effective November 1, 1947, Printed in 12 F. R. 7693).

Sec. 805,407-2 *Partial Payments*—(a) When payments are not to exceed 75 per cent of the cost of the property. In those cases where it is contemplated that partial payments in an amount not to exceed 75 per cent of the cost to the contractor of the property will be made, the contract will contain the following article:

*Partial Payments:* Partial payments, which are hereby defined as payments prior to delivery, or work in progress for the Government under this contract, may be made upon the following terms and conditions.

(a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract; *Provided*, That such partial payments shall not exceed 75 per cent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer; *Provided further*, That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 per cent of the total contract price of supplies still to be delivered.

(b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice shall forthwith vest in the Government; and title to all

## Appendix "B"

like property thereafter acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production; *Provided*, That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) In making payments for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

(d) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon terms approved by the Contracting Officer, provided, that after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and the applicable laws and regulations. The agreed price (in case of acquisition by the contractor) or the proceeds received by the contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Govern-

## Appendix "B"

ment as the Contracting Officer shall direct, and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Article shall vest in the Contractor.

(e) The article of this contract captioned "Liability for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof:

(f) If this contract (as heretofore or hereafter supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments article any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of



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the advance payment, of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Article, and shall thereafter be withdrawn only pursuant to such provisions.

(b) *When payments are not to exceed 90 per cent of direct labor and material costs.* In those cases where it is contemplated that partial payments in an amount not to exceed 90 per cent of the direct labor and material costs to the contractor will be made, the contract will contain the following article:

*Partial payments.* Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions:

(a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract; *Provided*, That such partial payments shall not exceed 90 per cent of the direct labor and direct material costs to the Contractor of the property upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer; *Provided further*, That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 per cent of the contract price of supplies still to be delivered.

(b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or pro-

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duced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: *Provided*, That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

(d) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon terms approved by the Contracting Officer; provided, that, after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the contractor) or the proceeds received by the Contractor (in

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case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of the termination inventory may be sold only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Article shall vest in the Contractor.

(e) The article of this contract captioned "Liability for Government-furnished Property" and any other provision of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction or of damage to property to which title vests in the Government under the provisions hereof.

(f) If this contract (as heretofore or hereafter supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments article any unliquidated balance of advance payments

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is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such partial payments shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Article, and shall thereafter be withdrawn only pursuant to such provisions.

**Armed Services Procurement  
Regulation**

**Excerpt re -  
advance vs. partial payment**

**"Nature of advance payments.** Advance payments shall be deemed to be payments made by the Government to a contractor in the form of loans or advances prior to and in anticipation of complete performance under a contract. **Advance payments are to be distinguished from 'partial payments' and 'progress payments' and other payments made because of performance or part performance of a contract."**

**APPENDIX "C"****CHARTER OF THE CITY OF DETROIT****TITLE VI****CHAPTER II****Assessments-General****Assessments; Districts; Rolls:**

Section 1. All real and personal property within the city subject to taxation by the laws of this state shall be assessed at its true cash value by the board of assessors herein provided. Assessments shall be made according to assessment districts, the boundary lines of which shall conform to ward boundaries as established from time to time by the common council. There shall be an assessment roll in book form for each such district. All taxes upon personal property may be assessed in any district, whether the person assessed is a resident of such district or not.

**CHAPTER IV****TAXES****Date Payable; Liability for Payment:**

Section 1. All city taxes shall be due and payable on the fifteenth day of July in each year, and on that date shall become a lien on the property taxed. The owners or occupants or parties in interest to any real estate assessed hereunder

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shall be liable to pay such taxes, and all assessments levied in accordance herewith. The owners or persons in possession of any personal property shall pay all taxes assessed thereon.

**Collection of Taxes on Personal Property:**

Sec. 26. On and after the twenty sixth day of August in each year and at any time until the taxes mentioned herein are paid, the City Treasurer shall enforce the collection of all unpaid taxes which are assessed against the property or value other than real estate. If such taxes shall remain unpaid the City Treasurer shall forthwith levy upon and sell at public auction the personal property of any person refusing or neglecting to pay such tax, or collect the same through the courts. Six days' notice of any such sale shall be given by the City Treasurer by publication in the official newspaper. Whenever such sale shall have been made the proceeds thereof shall be applied to the payment of the taxes and percentage and the expense of such sale, and any surplus remaining thereafter shall be paid over to the owner of such property or other person entitled to receive the same. The City Treasurer shall have power in the name of the City to prosecute any person or corporation refusing or neglecting to pay such taxes or any special assessment by a suit in the Circuit Court for the County of Wayne, and he shall have, use and take all lawful ways and means provided by law for the collection of debts to enforce the payment of any such tax or any special assessment. The tax rolls or unit cards after the tax has been transferred thereto shall be prima facie evidence of the indebtedness of such person and the regularity of the proceedings by which such tax or assessment was assessed and levied. All city taxes upon personal property shall become on said fifteenth day of July a lien thereon and so remain until paid, and no transfer of the personal property assessed shall oper-

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ate to divest or destroy such lien." (As amended April 5, 1937.  
In effect April 14, 1937.)

**Taxes a Débt:**

Sec. 27. All city taxes upon personal property and real estate and special assessments thereon in addition to being a lien upon the property assessed shall become a debt against the owner from the time of the listing of the property for assessment, and shall remain a debt against the owner of the property or his estate after his death, until the same are paid.

